

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

OLD REPUBLIC INSURANCE COMPANY,

Plaintiff,

v.

Civ. No. 12-1156 KG/GBW

ECLIPSE AVIATION CORPORATION,

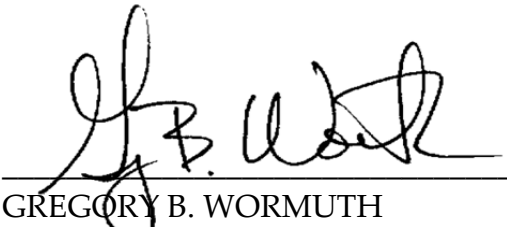
Defendant.

ORDER DENYING MOTION TO STRIKE ANSWER

This matter is before the court on Plaintiff's Motion to Strike Answer. *See docs. 24, 26, 29, 30.* Plaintiff argues that the Answer was filed by a non-party—Certain Underwriters of Lloyd's, London ("Underwriters")—and not by the Defendant Eclipse Aviation Corporation ("Eclipse"). For its part, Underwriters argues that as Eclipse's insurer it "has the right to act on behalf of its insured in litigation. Because Eclipse now no longer exists and cannot authorize Underwriters to act on its behalf, Underwriters has filed an answer to the extent it can to avoid prejudice to itself while coverage issues are resolved in a declaratory judgment action that addresses the effect of Old Republic's inequitable actions." *Doc. 26* at 1. The strength of Underwriters' argument depends on whether it has an obligation to defend or indemnify Eclipse. That question is the subject of a separate lawsuit filed in this District. *See Certain Underwriters of Lloyd's, London Subscribing to Policy Number B080111789A08 v. Old Republic Insurance Co. &*

Phoenix Aviation Managers, Inc., Civ. No. 13-701 KG/ACT. The instant case has been stayed pending the resolution of that lawsuit. *See doc. 35*. Until that matter is resolved, the Court cannot reasonably weigh the merits of the Motion to Strike Answer in this case. Therefore, the Court finds that the Motion to Strike Answer is not yet ripe and should be denied without prejudice.

WHEREFORE, Plaintiff's Motion to Strike Answer (*doc. 24*) is **DENIED** without prejudice to its refiling after the stay in this case is lifted.



GREGORY B. WORMUTH
UNITED STATES MAGISTRATE JUDGE